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EXTRATERRITORIALITY IN CHINA

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Of late years there has been a growing conviction on the part of governments whose nationals enjoy extraterritorial privileges in China that these privileges, which confer on foreigners in China immunity from Chinese jurisdiction, must be given up. This conviction is due to a change of policy on the part of the powers who are exhibiting a more yielding attitude to China's demands. There is marked difference of opinion of the progress which has recently been made by China in improving the administration of justice, but new codes and laws, both civil and criminal, have been promulgated during the past few years.

The idealism voiced by Allied leaders during the World War did not fall on deaf Chinese ears. Self-determination was not a new phrase, but it derived a new connotation when voiced by statesmen of countries which had long been regarded as leaders of "imperialism". Thus when she was invited to join the Allies in 1917 China seized the opportunity, thinking thereby to establish herself as a full equal in the family of nations and to gain sympathetic consideration of her efforts to improve her international position. Beginning with the Peace Conference, and at every opportunity since, China has sought the abolition of the so-called unequal treaties which for nearly a hundred years have provided foreigners in China with a status which she has come to regard as a national humiliation. China obtained the desired concessions from Germany and the other vanquished powers with comparative ease. But the victors have found it difficult to yield.

The progress which China has made toward abolition, despite disturbed conditions, is a testimonial to the sincerity of present-day statesmen of the West in their effort to redeem the implied promises of their predecessors.

While it is true that several countries have been forced to relinquish extraterritoriality, or have agreed to do so under certain hypothetical conditions, none of the powers with really large interests has done so. The Chinese accomplishment has been in gaining sympathetic interest in their plea. All nations now agree in principle that the treaties should be redrafted, and that jurisdiction over foreigners should eventually be placed in the hands of China. It still remains to determine when and how this may be achieved.

So far as this country is concerned, the State Department on November 13, 1930, made the following statement:

"On September 18, 1930, the Department announced that it would be prepared in October to resume the conversations begun some time ago in regard to American extraterritorial jurisdiction in China. Proposals of the American Government have recently been communicated to the Chinese Minister, Dr. C. C. Wu, in Washington, and to the Minister of Foreign Affairs of the National Government of the Republic of China, Dr. C. T. Wang, in Nanking.

"The proposals are in keeping with the statements of the Department issued under dates September 4, 1929, and November 11, 1929, that the American Government was prepared to enter into negotiations which would have as their object the devising of a method for the gradual relinquishment of extraterritorial rights, either as to designated territorial areas or as to particular kinds of jurisdiction, or as to both, provided that such gradual relinquishment proceeds at the same time as steps are taken and improvements are achieved by the

Chinese Government in the enactment and effective enforcement of laws based on modern concepts of jurisprudence.

"Broadly speaking, the proposals are constituted in part on the principle of transfer of jurisdiction in reference to specified kinds of cases and in part on the principle of such transfer in all but a specified area or areas.

"The proposals are similar to, but not identical with proposals made to the Chinese Government by the British Government on September 11, 1930."

Subsequent to the exchange of drafts of proposals between the American and the Chinese Governments and between the British and the Chinese Governments during the autumn of 1930, negotiations have been proceeding. The negotiators have reached accord in regard to many of the questions involved but there still remain unsolved (May, 1931) several questions closely connected with the British and the American plans which are based on the idea of gradual relinquishment and the Chinese plan which is based on the idea of complete and immediate relinquishment.

In the days of early intercourse between the East and the rest of the world, China claimed universal overlordship, a claim which the other states never accepted. Of her own volition China did not belong to the family of nations and her intercourse with outsiders was carried on more or less arbitrarily and not according to the rules of international law. It therefore became necessary for other nations to evolve a procedure modeled on existing forms of relations between nations but adapted to meet Chinese conditions. This resulted in the creation of an international status which is most complicated. China is now a member of the family of nations, but some of the old limitations still remain, and any rapid change of status would adversely

affect the enormous foreign and Chinese interests which have grown up under the old rules.

Conflicts of jurisdiction occurred from the beginning of intercourse between China and the West until they finally culminated in the Opium War between China and Great Britain. As a result of this war, Great Britain imposed on China the General Regulations of Trade of 1843, the first treaty to regularize extraterritoriality. The treaty was followed in 1844 by similar treaties with the United States and France and then with other nations, until on the outbreak of the World War there were eighteen nations enjoying extraterritoriality.

In 1900 the Boxer uprising aided greatly in consolidating the position of the powers vis à vis China. The resulting protocol placed greater restrictions on China's sovereignty; and the Diplomatic Corps, owing to the functions which it assumed in carrying out the provisions of the protocol, took on a more formal organization, with the doyen speaking to the Chinese Government with the voice of eighteen nations. This was the position in 1914. It seemed so unlikely that there would be an early change in the status of foreigners in China that little attention was attracted by China's cautious intimations that extraterritoriality was irksome to her dignity as a member of the family of nations.

The war brought a great change. China entered the war on the side of the Allies. With the coming of peace, Germany, the former Austro-Hungarian Empire and Russia were forced to renounce extraterritoriality. The Diplomatic Corps at Peking then found itself unable to speak with one voice on the subject. There were dissenters in their midst, though none of the other three nations were admitted to the society of the "Protocol Powers". China then initiated the

course, which she has since pursued with marked success, of dealing with the powers individually. Thus the Diplomatic Corps at Peking has now practically ceased to have any voice as a unit save in the usual ceremonial sense.

At the Paris Peace Conference, China brought her grievance before the world. Owing to the preoccupation of the powers in European matters, her plea gained little notice. But at the Washington Conference in 1921 she was accorded a better hearing. Her request was taken under sympathetic consideration, and a commission was appointed to investigate the administration of justice in China. This commission rendered its report in 1926, and while laying down certain prerequisites, expressed itself in favor of eventual abolition.

Meanwhile the so-called Nationalist Movement was growing in China, and in 1927 and 1928 the military campaign of the Nationalists succeeded in establishing the Nanking Government. This government, the organizers of which had long spoken of the revision of the so-called unequal treaties as one of their principal objectives, proceeded to address itself vigorously to treaty revision. Thus in 1928 and 1929 China renewed her request to all the Treaty Powers individually (except Japan and two or three others whom she treated differently) for the relinquishment of extraterritoriality. The American Government replied that it was prepared to negotiate with the object of devising a method for the gradual relinquishment of extraterritorial rights, provided such gradual relinquishment "proceeds at the same time as steps are taken and improvements are achieved by the Chinese Government in the enactment and effective enforcement of laws based on modern concepts of jurisprudence." China countered with a note on September 12, 1929, pointing out that the Nationalist Government had made great progress since the report of the Commission on

Extraterritoriality in 1926, and urged the United States to proceed with the negotiations. The United States replied that it was ready to proceed, as stated before, on the basis of gradual abolition pari passu with improvements in China's administration of justice.

This, however, was not fast enough for China. So at the end of the year, December 28, 1929, the following mandate was issued:

"For the purpose of restoring her jurisdictional sovereignty, it is hereby decided and declared that on and after (January 1, 1930) all foreign nationals in the territory of China who are now enjoying extraterritorial privileges shall abide by the laws, ordinances and regulations duly promulgated by the central and local governments in China.

"The Executive Yüan and the Judicial Yüan are hereby ordered to instruct the ministers concerned to prepare as soon as possible a plan for the execution of this mandate and to submit it to the Legislative Yüan for examination and deliberation with a view to its promulgation and enforcement."[1]

On its face this seemed to be the initiation of unilateral action for the immediate abolition of extraterritoriality; but two days later the Chinese Minister of Foreign Affairs issued an explanatory statement as follows:

"The year 1930 is the decisive time, and the actual process of reestablishing Chinese sovereignty by the abolition of extraterritoriality begins on January 1.

"The Chinese Government --- believes that there is no difference between those Powers and China regarding the principle involved; and its prepared to consider and discuss within a reasonable time any

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1. Cf. "Survey of American Foreign Relations, 1930," p. 187.

representations made with reference to the plan now under preparation in Nanking. In this respect the issuance of the mandate of December 28 should be regarded as a step toward removing the cause of constant conflict, and at the same time promoting the relations between Chinese and the foreigners."

When these negotiations first started, at the close of the World War, nineteen powers enjoyed extraterritorial privileges in China.[2] Of these, three have unconditionally given them up, and thirteen more have signified their willingness to yield to China's demands under certain specified conditions.

On May 4, 1931, the Chinese Government issued a Mandate which was subsequently approved by a Manifesto of the National Peoples' Convention on May 13, 1931, promulgating a set of regulations consisting of twelve Articles which are to govern, on and after January 1, 1932, judicial jurisdiction over those foreigners who enjoyed extraterritorial rights in China on December 31, 1929. The regulations promulgated by this Mandate contain provisions which have been the subject of discussion by the American, British and Chinese negotiators but concerning which no commitments by either the United States or Great Britain have yet been made.

The Extraterritorial powers at the close of the World War were as follows: Austria-Hungary, Belgium, Brazil, British Empire, Denmark, France, Germany, Italy, Japan, Mexico, the Netherlands, Norway, Peru, Portugal, Russia, Spain, Sweden, Switzerland and the United States.

Of these Germany and Russia have unconditionally relinquished

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2. There were eighteen in 1914. But Switzerland became an Extraterritorial Power in 1918 by the Treaty of Tokyo, Article II and the declaration attached to the Treaty.

extraterritoriality, as have the new states of Austria and Hungary.

The powers which have promised under certain contingencies to relinquish it are thirteen in number. Belgium, Denmark, Italy, the Netherlands, Norway, Portugal, and Spain have made treaties since 1928 containing declarations to that effect. The others have made such declarations at earlier dates, as follows: British Empire, by Article XII of the Treaty of 1902; Japan, by Article XI of the Treaty of 1903; Mexico, by the inter alia statement of the Minister of Foreign Affairs, November 12, 1929; Sweden, by Article X of the Treaty of 1908, Switzerland, by the most-favored nation clause in the Treaty of 1918; and the United States, by Article XV of the Treaty of 1903. The United States subsequently confirmed and developed the position which it adopted in 1903 on several occasions, most recently by the statement of November 13, 1930, quoted above.